

OPINION
43-59

November 30, 1943 (OPINION)

INCOMPETENTS

RE: Residence: DOROSCHUK, Kate and Mary.

Your letter of November 26th addressed to the Attorney General and enclosing copy of a letter from the superintendent of the Grafton State School relative to the above-mentioned patients, has been received and referred to the undersigned for attention and reply.

It appears that these patients were committed from Billings County in August, 1937, and in June, 1941. The board of County Commissioners of Billing County has now passed a resolution not to make further payment for the care and maintenance of such patients at the Grafton School.

Section 1717 of the Supplement to the Compiled Laws provides that:

"The person legally responsible for the support of any person admitted to the institution for the feeble minded shall pay the sum of fifteen dollars per month during all the time such defective person is an inmate of the institution. This amount shall be paid to the county treasurer monthly. If the person liable to pay this amount fails or neglects to make payment thereof upon demand by the auditor, the board of county commissioners must direct the states attorney to bring an action in the name of the state against such person for the recovery of such payments as are delinquent."

However:

"If the person liable for the support of such inmate be unable to pay such sum for which inability the certificate of the county judge of the county from which such inmate was admitted shall be prima facie evidence, such sum shall be a charge upon the county and no action shall be brought or maintained against a person unable to pay for the support of such inmate after the county judge has issued the certificate herein provided."

I presume that in this case, a certificate of indigence is on file in the office of the Judge of the County Court. If, therefor, there is no change in the financial condition or ability of the person legally liable for the support of these patients, it is, of course, the duty of the county of which they are legal residents to make the payment.

It appears from information contained in the letter from the superintendent of the Grafton School, that the intelligence quotient of these patients is 43, which I understand, is very

low, and from other information in the same letter, it certainly would appear that they should not be released and be at large.

If they are legal residents of Billings County and the parents or those responsible for their support are financially unable, then, it is the duty of the county to pay, and if the commissioners refuse, an action should be brought to compel payment.

ALVIN C. STRUTZ
Attorney General